



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to industry code governance review initial proposals: major policy reviews and the role of code administrators

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Executive Summary

Consumer Focus broadly supports the initial proposals outlined by Ofgem, including the proposals for major policy reviews and the three-path approach for dealing with code modifications. The initial proposals have in the main addressed the concerns we expressed in our consultation response on this issue in February 2009. However, we still have concerns about the adequacy of the safeguards proposed for major policy reviews and the proposal that Consumer Focus provide advice for panels regarding the possible consumer impact or detriment of modification proposals.

We are pleased that Ofgem and other industry parties support Consumer Focus' proposal for full membership and voting rights on Uniform Network Code (UNC). We reiterate our commitment to full participation in UNC if these rights are forthcoming.

Aside from our involvement in the Balancing and Settlement Code (BSC), Connection and Use of System Code (CUSC) and UNC we will maintain a watching brief over the other code panels with the right to raise issues or modifications if and when necessary. We support the introduction of a licence condition to support code administrators taking on the critical friend role.

We believe there are advantages in adopting the new governance arrangements. We are concerned, though, that the work required to introduce the new initiatives does not negate these advantages through the introduction of unintended bureaucracy.

Consumer Focus response to key issues

Major policy reviews

1. Consumer Focus supports Ofgem's proposed reforms to the industry code arrangements, including the introduction of major policy reviews (MPR).
2. Consumer Focus agrees that there is a need for reform of the industry codes governance arrangements. There are significant challenges facing the gas and electricity markets in Great Britain, such as security of supply, the introduction of smart meters/grids and sustainable development. We believe changes to the industry code governance arrangements are important to help ensure that the market can meet these challenges.
3. We agree that current arrangements are unnecessarily complex and have made it difficult for small and new industry participants in the market, and consumer representatives, to understand and engage in the process.
4. As we stated in our consultation response in February 2009, we would like to see code governance arrangements which are easily understood as these would benefit all participants in the market.
5. There will be advantages in adopting the proposed three-path approach for dealing with modification proposals, provided they result in reform and not merely the introduction of further bureaucracy.
6. Once new governance arrangements for MPR and self-governance are agreed this new approach should be applied to all relevant/appropriate codes. However, we understand that, initially, the new arrangements will apply to the major codes – the BSC, CUSC and UNC.
7. Extension of these arrangements beyond the three major codes has implications surrounding the resourcing for code administrators and requires the agreement of industry parties. However, we believe that in the long term this will ensure the efficient and transparent operation of code panels and the code modification process.
8. While costs associated with the introduction of the arrangements are difficult to quantify, we believe they will be offset by savings and efficiency benefits.
9. Ofgem has attempted to address our concerns that adequate safeguards are set up prior to the introduction of MPRs.

10. We note proposals to introduce three initiatives to achieve this: a time window for parties to raise alternate modifications; the ability for urgent modifications to be raised; and the ability for Ofgem to change direction in light of new information.
11. We have concerns regarding the introduction of a time window for parties to raise alternate modifications. A thorough MPR process should have addressed possible solutions and we believe that alternative proposals should not be necessary.
12. There may be more than one way of achieving a desired objective, each with advantages and disadvantages. However, as previously stated, the choice should have been resolved within the MPR.
13. If there is a view among industry parties that Ofgem's choice of route is inappropriate, we are open to the time window being utilised, provided that any alternative proposal is wholly focused upon the desired objective and is fully developed.
14. We have some questions about initiatives (see below) which should be addressed prior to the introduction of major policy reviews:
 - How will Ofgem decide which code party to direct to raise the modification as a result of the MPR? For example, parties include National Grid, suppliers and generators. How will the most appropriate party be identified?
 - Will the MPR process be applied retrospectively to current modifications under consideration (ie, transmission losses)?
 - Who will pay for the costs associated with conducting an MPR (ie, cost benefit analysis, any modelling)?
15. It would be useful for future reviews and in order to enable comparisons of total costs between the new and current arrangements that the cost of MPR's are separately identified by Ofgem.

Filtering process and criteria

16. Ofgem outlines the criteria to assess modifications and determine which path they will follow. The criteria is based on whether the modification has 'non trivial' impacts on consumers and/or competition, as well as a range of other factors.
17. We have concerns about how panels will assess the impact of the modification using this criteria in the initial stages. This process needs more thought and the development of guidance material for panels. Consumer Focus would be happy to contribute towards the development of this guidance material in conjunction with Ofgem and other parties.
18. The impact on current and future consumers should be at the heart of any panel decision. We believe it is the responsibility of all parties to be able to assess consumer impact.
19. Ofgem has suggested that Consumer Focus provides opinion and advice for panels on possible consumer impacts. We acknowledge that panels need to properly assess the modifications and that this will require information on consumer impacts. However, we have concerns with this proposal. Consumer Focus does not have the resources to assess, analyse and advise on every new modification proposal for every panel.
20. Where we participate as a panel member (BSC and CUSC, and potentially UNC) we would provide an opinion on consumer impacts.
21. We believe that panels and parties involved in the modification process (such as code administrators) should develop the expertise to assess modifications in terms of impacts of consumers. It is evident to us that many panel members and code administrators can already provide analysis on possible impacts to consumers.
22. Consumer Focus is happy to contribute to the development of any guidance material or information that would be useful for panels to assess modifications.
23. There is inconsistency in Ofgem asking panels to provide advice on consumer impact but not being prepared to change the code objectives to make it a criteria for panel decisions. We support a change to code objectives which makes consumer impact a criteria for decisions.
24. We support Ofgem's proposal that code parties and consumer representatives should be able to request that a self-governance modification be sent to path-two and that Ofgem can redirect modifications into the self-governance path if required. We note that Ofgem will have a general power to override panel filtering decisions.

Self-governance

25. Consumer Focus is among the majority of industry parties which support the self-governance process for relevant modifications.
26. We note the proposal that industry develops the required processes about panel structure for self-governance (independent, representative or all signatories and role of consumer representatives) to be submitted to Ofgem for approval.
27. We believe that a new structure for self-governance modifications would not be the best use of panel/code administrators' resources. Given that Ofgem does not propose to change the structure of panels, we believe the best way forward is for panels to continue operating as they do now when considering 'house keeping' modifications with the same panel membership and processes. Where Consumer Focus does not have a representative on a panel we will monitor the progress of self-governance modifications and if necessary apply to Ofgem for the modification to be redirected to path two.

Outcomes of MPRs

28. In our previous response we stated our support for the use of option three, where Ofgem prepares the modification proposal and legal text as a last resort. We prefer to see Ofgem maintain independence and distance from the process, and continue to support this position.

Appeal mechanisms

29. We agree with Ofgem that the existing appeals process is sufficient for MPRs. The process leading to the Competition Commission provides an adequate means of appeal.
30. We support the self-governance appeals process being proposed. There are concerns that the three-stage process is overly complex; however this process may be effective in dealing with an appeal at the initial code forum stage and will save time and resources with appeals progressing to Ofgem.

Role of the code administrator

31. Consumer Focus supports Ofgem's intention to introduce formal arrangements to ensure code administrators take on the critical friend role.
32. The code administrator must take on the role of providing information and advice to consumer representatives and small market participants, flagging up issues of special interest to consumers or code panel members.
33. We support the view that moving to an active secretariat role (which would provide more support for small industry participants and consumer representatives) might be appropriate in the future, with support of industry.
34. There are pros and cons both for code administrators who have responsibility for systems and those who do not. In our previous response we stated that the advantages of this joint role (such as effective functioning) outweigh the perceived disadvantages (such as conflict of interest) but recommended a thorough analysis of the implications. Given the limited industry support for this proposal, we support the notion that this idea does not progress.
35. It is disappointing that Ofgem does not intend to promote improvements for the code administrators' governance structure. Code administrators should have defined and clear objectives governing performance for costs and quality of service. We support:
 - a uniform approach to governance arrangements
 - the use of an independent company and board, similar to the BSC and Elexon role
 - a service contract approach which would provide incentives for the code administrator to maintain efficient costs.
36. We would support further changes in areas outlined in point 35 if over more support is forthcoming.
37. We note and support Ofgem's other proposals for improvements:
 - that Ofgem can call in and send back modifications
 - the requirement for all code panels to provide reasons for their recommendations
 - the introduction of independent panel chairs
 - the introduction a single code of practice for all code administrators
 - the creation of performance evaluation measures for code administrators

38. Consumer Focus maintains its position to allow code administrators to raise code modifications as they are well placed to identify deficiencies in their codes and to identify possible solutions. Ofgem's decision not to proceed with this improvement should be reviewed once the 'critical friend' arrangements have been established.
39. We support the intended change for UNC so that the panel can raise efficiency modifications. This would ensure that UNC operation is consistent with the other panels, ie, the BSC and CUSC.
40. We are pleased that Ofgem and some industry parties support Consumer Focus proposal for full membership and voting rights on UNC. We reiterate our commitment to full participation in UNC if these rights are forthcoming.
41. Some industry parties are concerned that Consumer Focus could hold a casting vote on UNC. However, the introduction of an additional consumer representative seat and an independent chair with a casting vote would change this voting dynamic.
42. Consumer Focus does not want the responsibility to appoint more than one consumer representative to the UNC. Other consumer representatives could be appointed, such as the Major Energy Users' Council or the independent chair, and be afforded the right to appoint a second consumer representative with suitable guidelines or approval by Ofgem.
43. As outlined in our previous response, we would prefer to target our resources so that consumers are represented on panels where changes have the most significant impact. We proposed that Consumer Focus has full membership and voting rights on the following panels: BSC, CUSC, Distribution Connection and Use of System Agreement (DCUSA) and UNC.
44. Full participation on the code panels gives us greater scope (when acting in a representative rather than in independent capacity) to advocate for consumers. Voting also sends a clear signal to industry about our position.
45. Ofgem does not address our request for representation on DCUSA in the initial proposals. We note we have the existing right to raise modifications on DCUSA.
46. The proposal to introduce independent chairs for panels is a principle we support. We would like to acknowledge the even handedness and impartiality of the current chairs of CUSC and UNC even though they are not formally appointed independent chairs.

Obligations to assist small industry participants and consumer groups

47. We believe that small industry participants, new entrants and consumer representatives face hurdles when engaging in the process. The nature of each hurdle depends on the technical expertise and resources available to participate on a number of panels. We also believe that changes to the codes can alter the way the market operates in terms of significant pass-through costs to consumers, the

distortion of competition and restricting new entrants into the market. Consumers' voices need to be heard in this process.

48. While most code administrators incorporate some of the features of a 'critical friend', we believe this is an important role and that a licence condition should be introduced to support its inclusion.
49. We support the definition of a small industry participants as those parties with fewer than 250,000 customers.
50. Ofgem's December 2008 consultation document outlines suggested definitions for small generators and distributors. We believe that these proposals remain sensible.

Specific questions: Major policy reviews and self-governance

Key Issues

Q. Do you agree with our assessment of the deficiencies of the codes governance arrangements and do you agree there is a case for reform?

A. Yes, refer to paragraphs 1-5 of our response.

Q. Are the proposed reforms a proportionate response to the problems with the status quo?

A. Yes in most cases. Refer to paragraphs 11 to 14 for some concerns.

Q. Would the MPR process enable key strategic issues to be progressed more effectively and efficiently with consequent consumer benefits?

A. Yes, definitely.

Q. Would a self-governance route be suitable for a significant proportion of modification proposals?

A. Unsure of the number that would be suitable for consideration under a self-governance path.

Q. If both the MPR and self-governance routes were implemented, is there a case for retaining an improved status quo path?

A. Yes, definitely. There will be a large number of modifications which will need to be considered via this path.

Q. If this package of reforms is implemented, should it apply to all codes? If not, which? Should the introduction be phased?

A. We support the reforms being introduced for all codes as a uniform approach would be less confusing and more efficient. We support a phased introduction; the BSC, CUSC and UNC first, followed by others in future with support and agreement from industry.

Determining the code modification pathway

Q. Do you agree that, once a modification has been raised, the filtering decision should be taken by the relevant panel, subject to an Ofgem veto which could be deployed at any point before a final decision on the proposal has been made?

A. Yes.

Q. Do you agree with the proposed criteria that should be applied to assessing whether a modification falls into path one or path two? Is further guidance necessary?

A. Yes, we agree with the criteria and believe further guidance is necessary. Refer to paragraphs 17 to 24 for our concerns and suggestions.

Q. Do you agree with our proposals for redirecting modification proposal between paths three and two?

A. Yes.

Q. Should code parties be able to make requests to Ofgem at any time in order to raise an urgent modification proposal to existing arrangements that are the subject of an MPR?

A. Yes, this is important to ensure all issues can be addressed.

Q. Do you agree that there should be a moratorium for non-urgent modifications to existing arrangements that are the subject of an MPR?

A. Yes.

Major policy reviews

Q. Do you agree that Ofgem should retain the flexibility to vary the MPR process according to the complexity of the issues involved?

A. Yes.

Q. What are your views on the options for determining the outcome of an MPR?

A. Refer to paragraph 28 of our response.

Q. Do you support our proposal that the industry should be given the responsibility of drafting appropriate MPR-related code modifications, with Ofgem having a power to draft them only if the industry fails to do so within a specified time period?

A. Yes.

Q. What safeguards and appeal mechanisms should be in place?

A. We support the proposed safeguards and existing appeals process. Refer to paragraph 29 for details.

Q. Do you support our proposal for a time-window in which subsequent code modifications could be proposed after the completion of an MPR?

A. Yes, with some concerns. Refer to paragraphs 11 to 13 for details.

Q. Do you agree that Ofgem should be able to revise its MPR conclusions in the light of subsequent new information?

A. Yes

Self-governance

Q. Do you agree that the industry should draw up proposals for panel and voting arrangements and submit them as part of a self-governance package to Ofgem for approval?

A. No, we do not agree. Refer to paragraphs 26-27 for details.

Q. Do you agree with our proposals for redirecting modifications from path three to path two?

A. Yes.

Q. Do you agree that there should be general appeal rights equally applicable to all code participants?

A. Yes.

Q. Do you agree with the proposed grounds for appeal?

A. Yes.

Q. Do you agree that Ofgem should hear appeals of self-governance modification decisions?

A. Yes.

Q. Do you support the proposals in respect of interim forums, time limits and frivolous or vexatious appeals?

A. Yes.

Impact assessment

Q. Do you agree with our assessment of the package of reforms against the Review Objectives?

A. Yes

Q. Do you agree with our quantitative assessment of the potential cost savings of reform?

A. Quantitative assessment, as Ofgem acknowledges, is necessarily speculative. However, we believe that there should be financial benefits to consumers from earlier, more holistic change proposals arising from an MPR. There should also be cost savings to industry participants and Ofgem arising from the operation of the new arrangements.

Q. Do you agree with our assessments of the potential impact of reform on consumers, competition and sustainable development?

A. Yes. The new arrangements would better enable consumer representatives to concentrate their efforts and resources in those areas where consumer benefit is likely to be greatest.

Q. Do you agree with our assessment of the potential unintended risks and consequences?

A. Yes. It will be important to manage these risks. The proposal for a review after three years is welcome, but if there are serious unintended consequences or flaws in the processes which become evident, they should be addressed sooner.

Code administrators and small industry participants / consumer groups

Q. Which activities should be considered within scope of the 'critical friend' approach?

A. We agree with those identified in Ofgem's initial proposals document (paragraphs 3.4 to 3.5, 3.7 and 3.16).

Q. What is the appropriate mechanism to introduce the 'critical friend' approach?

A. We support a licence condition.

Q. Should a specific obligation be placed upon code administrators to assist smaller industry participants and consumer representatives?

A. Yes.

Q. For the purposes of identifying those who will be offered greater assistance by the code administrator, what is the appropriate threshold between small and large industry participants for each category of party?

A. Refer to paragraphs 49 and 50 of our response for details.

Q. Is it appropriate to modify the Gas Transporters' licence in order to provide voting member status to consumer representatives on the UNC?

A. Yes. Refer to paragraphs 40-42 for details.

Q. Are there any other bodies in addition to Consumer Focus which the Authority should consider as potential consumer representatives on the UNC?

A. Refer to paragraph 42.

Q. Do you agree that the Authority should appoint the chairs of the UNC and CUSC panel in addition to the BSC?

A. Yes, we support independent chairs for all major panels.

Q. Should such an appointment be made only at the end of the current chairs ordinary tenure?

A. Yes, it seems a fair approach.

Q. How should the salaries of the independent chairs be funded?

A. Industry should fund the costs associated with the independent chair. We support the current BSC approach.

Q. What is the appropriate mechanism by which these proposals can be introduced?

A. We support licence modifications to give effect to these proposals.

Q. Do you consider it necessary to include the powers to 'call in' and 'send back' modification proposals within the relevant licences?

A. Yes.

Q. Do you consider that a licence modification requiring more explicit provision of reasons for recommendations is appropriate?

A. Yes.

Q. Do you consider that a regular score card evaluation of the code administrators' conducted by Ofgem would be of value, particularly in influencing the behaviour of the code administrators?

A. Yes. Elexon already uses performance measures, and reports to the panel on their progress. Care would need to be taken to ensure that any measures developed were meaningful and relevant.

Q. Do you consider that code administrators' should be required to obtain and maintain ISO9001 accreditation for their processes?

A. We believe that quality management is important and support some form of accreditation by code administrators. We believe that compliance with ISO9001 may cost significantly more than Ofgem states (£1,000 – £3,000) in the initial proposals document. We are concerned that this could have significant impact on the resources of some code administrators. We suggest further research and analysis of the costs associated with this proposal, and also suggest investigating other options for quality management standards prior to the introduction of this proposal.

Consumer Focus response to industry code governance review initial proposals: policy review and the role of code administrators

If you have any questions or would like further information about our response please contact Abigail Hall, Senior Policy Advocate, by telephone on 020 7799 7934 or via email: abigail.hall@consumerfocus.org.uk

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